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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/665,670

09/18/2003

Heather Lynn Focht

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27752 7590 07/05/2007
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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

07/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/665,670	Applicant(s) FOCHT ET AL.	
	Examiner Lakshmi S. Channavajjala	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4-5-07</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Receipt of amendment, response, terminal disclaimer and IDS all dated 4-05-07 is acknowledged.

Claims 1-19 have been examined. New claims 20-27 have been added.

Terminal Disclaimer

The terminal disclaimer filed on 4-5-07 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6673755 and 10/699,469 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

In view of the amendment, the following new rejection has been applied:

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-9 and 14-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5612307 to Chambers in view of US 6534456 to Hayward et al.

Chambers discloses an aqueous composition that comprises a cleansing portion and a moisturizing potion, wherein the former comprises 1% to 35% surfactant, water, thickener such as gaur gum (col. 2, col. 3, L 15-16, example formulation B of col. 8) and

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the latter comprises an emollient that reads on the instant hydrophobic material because Chambers discloses the same oils, lipids etc., that are described in the instant invention (col. 2). The composition of Chambers upon dispensing forms individual stripes of the benefit agent and base formulation (surfactant). The benefit phase of Chambers does not contain water or surfactants and hence reads on claims 3 and 4 (examples in col. 11, L 11-20). Instant specification describes certain hydrophobic materials that possess the claimed solubility parameter (page14) and because the same hydrophobic materials are also employed by Rattinger (entire col. 4), hence the claimed solubilities, Shear Index and consistency values (claims 7-8) are inherent to the emollients of Chambers. With respect to claims 15 and 16, the composition of Chambers form stripes. With respect to claim 19, the claimed method of using the composition is inherent to the composition of Chamber, because the composition is meant to be used by applying the required amount and rinsing the skin or hands with the water after washing.

Chambers fail to teach a physical contact between the two phases.

Hayward discussed the teachings of Chambers in the introduction section.

Hayward teaches that the composition of Chambers and other prior art require that the composition is separated until use so as to be able to deposit the benefit agents while still cleaning. However, Hayward suggests an improvement over the above compositions and suggests a packaged, stable, extrudable, multiphase liquid cleansing composition comprising a lamellar and an isotropic phase. The composition of Hayward is present in a single container and is packed without any partitions i.e., are in physical

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contact (col. 4, L 1-50). Example 2 of Hayward teaches a composition with a lamellar phase comprising surfactant, oil, glycerin, perfume, water, citric acid, crodalan, glycerin, edta, citric acid etc., and isotropic phase comprises a surfactant, water, sodium hydroxide, acrylate polymer etc. Thus, the two phases exemplified in the above composition reads on the instant first stripes. Hayward teaches that the components can be packed without barriers when the viscosities of the two phases are compatible and that the rheological behavior of the cleansing surfactants depends on the microstructure. Hayward further suggests ways to control the flow properties of both phases (flowing versus thick) so as to be able to pump the compositions together (col. 2-5). Thus, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to optimize the rheological properties of two phases of the composition of Chambers so as to be able suspend both the phases together without any partition between the phases and thus extrude them together as stripes and still be able to maintain the viscosity because Hayward teaches several ways to alter the viscosity of the lamellar and isotropic phases so as to obtain a desired final product where the lamellar phase do not lather as the isotropic phase does and the isotropic phase does not deposit the skin care ingredients as the lamellar structures. Thus, a stable composition containing both components that are in contact and yet do not affect each other in performance is expected.

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5612307 to Chambers in view of US 6534456 to Hayward et al, as applied to claims 1-9 and 14-27 above, and further in view of US 2003/0180246 to Frantz et al.

Chambers and Hayward discussed above fails to teach the claimed cleaning phase with alkanolamides.

Frantz teaches a stable surfactant composition for suspending components in compositions such as shampoos, cleansers, body washes etc., including striped compositions (abstract, para 0122). Frantz teaches that the surfactant containing suspending formulations (reads on instant cleansing phase) comprise an anionic surfactant, water, electrolyte and an alkanolamide, for imparting a free-flowing non-Newtonian shear thinning property to the composition (abstract, 0017-0048). In particular, the alkanolamides of 0045 have the same structure as that described in the instant specification and also employed for the same purpose as claimed. Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to employ the alkanolamide of Frantz in the cleansing phase of Chambers (containing a composition with the two phases in close contact) because Frantz suggests that the suspending phase comprising alkanolamide in addition to an anionic surfactant, water and an electrolyte (the cleansing phase of Chambers contain all three components) impart a free-flowing and non-Newtonian shear thinning property that provides the ability to suspend components or "benefit agents" such as oils, skin care agents etc (Frantz 0073-0076). A skilled artisan would have expected to achieve a free-flowing cleansing phase with a non-Newtonian shear thinning.

Response to Arguments

In response to applicants' arguments dated 4-5-07, the examiner has withdrawn the following rejections of record:

1. Rejection of claims 1-19 under 35 USC 102 over Rattinger et al or Chambers et al.
2. Rejection of claims under 35 USC 103 over Chambers and Chambers in view of Frantz.

Applicants argued that Chambers does not teach a composition wherein the composition contains stripes that are separated from each other. However, instant claims are now amended over Chambers in view of Hayward, where the latter reference teaches improvements over Chamber to prepare a composition wherein the stripes or phases are in physical contact and yet provide the benefit of cleansing and deposition of skin benefit agents.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

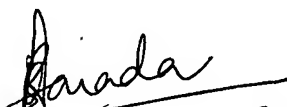
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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.00 AM -4.00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AU 1615
June 24, 2007


LAKSHMI S. CHANNAVAJJALA
PRIMARY EXAMINER